

Remarks

Claims 3-18 are in the case. Claims 1-2 have been cancelled in the present amendment. New claims 3-18 are presented. No new matter has been added by the amendments. Reconsideration is respectfully requested.

Claim Rejections – 35 USC § 102

Method claim 2 was rejected under 35 USC 102(e) as being anticipated by Cragg (U.S. 6,899,716). The Examiner takes the position that Cragg discloses a minimally invasive method of delivering bone graft material including the steps of: (1) creating an axial bore or portal; (2) inserting a needle 206 with one or more laterally opening ports depending upon desired performance characteristics; and (3) pumping bone growth or bone graft material through the needle to fill fissures or defects in bone (Figs. 12, 15 and 17, col. 19, lines 66-67, col. 20, lines 1-26, col. 25, lines 27-57, col. 26, lines 9-67 and col. 27, lines 1-40).

It is respectfully submitted that Cragg does not anticipate the claimed invention. The present application is directed primarily to solving the following problems, which are identified in applicant's discussion of the prior art:

Since the only opening for delivery of the bone graft material is the axial port, the prior art needle has the disadvantages of: (1) being unable to deliver bone graft material when the axial port abuts bone or other tissues, (2) not being able to radially inject bone graft material, and (3) requiring undesirable excessive force to eject bone graft material through the axial port.

[¶0006]. In contrast, Cragg is directed to augmenting and treating the spine using anterior or posterior TASIF axial bores, and does not identify the foregoing problems. Instead, Cragg focuses on delivering material to different vertebral compartments through the TASIF axial bore. Cragg makes no mention of using calcium sulfate as a bone graft material. Cragg also makes no mention of using demineralized bone matrix. Cragg does not show or describe a needle having

ports adjacent a distal end within the meaning of the present invention; this is due to the fact that Cragg was trying to solve a different problem, namely delivering material to different vertebral compartments, such as by using a device having double lumen of the type shown in Fig. 17 of Cragg. Cragg does not discuss using a syringe, and therefore cannot teach delivery of a bone graft material in the form of a paste using a syringe. Accordingly, it is respectfully submitted that the Commissioner for Patents has not met its burden of establishing a prima facie case of anticipation.

Conclusion

Applicant suggests claims 3-18 are now in a condition for allowance, and respectfully requests issuance of a notice of allowance. If the Examiner concludes that a telephone interview would facilitate examination of this application, undersigned would welcome such a conference. This response has been filed with a request for a one month extension of time. It is believed that no further extension of time is therefore required, but if an extension is required, applicant hereby requests an appropriate extension of time. It is further believed that no fees are due, but if any fees or credits are due, the Commissioner is authorized to charge or deposit them to Deposit Account No. 502795.

Respectfully submitted,


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